

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

VICENTE DIAZ-GARCIA,

Defendant.

NO. CR-09-2043-EFS

**ORDER DENYING THE REMAINDER OF
DEFENDANT'S DISCOVERY MOTION
AND DENYING DEFENDANT'S MOTION
TO DISMISS**

As mentioned in the Court's September 19, 2011 Order, ECF No. [56](#), a pretrial conference occurred in the above-captioned matter on September 7, 2011, in Yakima, Washington. This Order resolves Defendant's Motion for Discovery's, ECF No. [24](#), remaining issue – whether the U.S. Attorney's Office (USAO) must disclose the communications it had with the state prosecutor – and Defendant's Motion to Dismiss Indictment, ECF No. [34](#). This Order supplements and memorializes the Court's oral rulings.

A. Defendant's Motion for Discovery

The sole pending issue is whether the USAO must disclose the communications between it and the state relating to the timing of Defendant's federal prosecution. The Court finds that the USAO need not disclose these communications; Defendant has failed to establish any bad faith by the federal government, including the USAO. Rather, as is

1 discussed below, his federal prosecution in this matter was caused by the
2 state murder charge against Defendant. Because Defendant failed to show
3 that these communications are material, the Court denies this last
4 remaining portion of Defendant's discovery motion.

5 **B. Defendant's Motion to Dismiss**

6 Defendant argues his Sixth Amendment right to a speedy trial was
7 violated because more than twenty-eight months have passed since the
8 indictment was filed on April 14, 2009. As explained below, the Court
9 finds this post-indictment delay did not violate Defendant's speedy-trial
10 right. See U.S. Const. amend. VI. ("In all criminal prosecutions, the
11 accused shall enjoy the right to a speedy and public trial.").

12 Although a twenty-eight month delay is considerable, the delay was
13 reasonable under the circumstances. See *Barker v. Wingo*, 407 U.S. 514,
14 530, 533 (1972) (listing factors to assess whether a defendant's speedy-
15 trial right was violated). This delay was largely caused by Defendant's
16 prior state murder prosecution. See *United States v. Sears, Roebuck, &*
17 *Co., Inc.*, 877 F.2d 734, 739 (9th Cir. 1989) (recognizing that the cause
18 of the delay is the "focal inquiry" for the court). During much of this
19 time frame, Defendant was in state custody pending the Yakima County
20 Superior Court murder prosecution; on January 25, 2011, following a
21 guilty plea to second-degree murder and second-degree unlawful possession
22 of a firearm, Defendant was sentenced to 300 months. After Defendant's
23 state sentence was imposed, the USAO sought a writ of habeas corpus ad
24 prosequendum on April 20, 2011, ECF No. [7](#), and again on May 16, 2011, ECF
25 No. [8](#). On May 16, 2011, the writ was granted, ECF No. [9](#), and Defendant
26 appeared before the magistrate judge on June 3, 2011. The Court is

1 unsure why there was an approximate four-month delay between imposition
2 of Defendant's state sentence and his appearance before the federal
3 magistrate. However, there is no evidence that this delay was caused by
4 bad faith. And absent a showing of bad faith, it is reasonable to allow
5 the state to finish its prosecution before pursuing prosecution on the
6 federal indictment. Delaying the federal prosecution eliminated the
7 possibility of conflicting hearing dates and transportation issues,
8 thereby reducing the risk of confusion and disarray that could have
9 resulted from simultaneous prosecutions. See *United States v. Thomas*,
10 55 F.3d 144, 150 (4th Cir. 1995) ("To do otherwise would be to mire the
11 state and federal systems in innumerable opposing writs, to increase
12 inmate transportation back and forth between the state and federal
13 systems with consequent additional safety risks and administrative costs,
14 and generally to throw parallel federal and state prosecutions into
15 confusion and disarray."); *United States v. Schreane*, 331 F.3d 548, 554
16 (6th Cir. 2003) (recognizing that allowing another sovereign to complete
17 its prosecution is a valid reason for delay and a factor that weighs in
18 the government's favor). Further, although Defendant was aware by the
19 fall of 2010 of this federal § 1326 indictment, neither he nor his
20 attorney at the time advised the USAO that Defendant desired to proceed
21 on this indictment. See *Sears, Roebuck, & Co., Inc.*, 877 F.2d at 740
22 (recognizing that a defendant's failure to assert his speedy-trial right
23 weighs heavily against dismissal). Defendant also failed to show actual
24 prejudice resulting from this delay. Although he claims he has suffered
25 from 1) oppressive conditions of pre-trial incarceration, 2) anxiety and
26 concern, and 3) preclusion from rehabilitation programs, these complaints

1 have nothing to do with his ability to defend against the federal
2 indictment. Plus, Defendant would have faced the stresses associated
3 with being housed at Yakima County jail regardless of whether he had been
4 prosecuted on this indictment simultaneous with the state charges or now,
5 following the state prosecution.

6 The USAO's process also complied with both the Speedy Trial Act's
7 requirements and the Interstate Agreement on Detainer's Act. See 18
8 U.S.C. § 3161(c)(1) ("In any case in which a plea of not guilty is
9 entered, the trial of a defendant charged in an information or indictment
10 with the commission of an offense shall commence within seventy days from
11 the filing date (and making public) of the information or indictment, or
12 from the date the defendant has appeared before a judicial officer of the
13 court in which such charge is pending, whichever date last occurs."); *id.*
14 § 3161(j) (requiring the government to cause a detainer to be filed with
15 the person having custody of the prisoner and request him to so advise
16 the prisoner and to advise the prisoner of his right to demand trial).

17 For these reasons, the Court denies Defendant's dismissal motion.

18 **C. Conclusion**

19 For the above-given reasons, **IT IS HEREBY ORDERED:**

20 1. Defendant's Motion for Discovery, **ECF No. [24](#)**, is **DENIED IN PART**.

21 This motion is now fully resolved.

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s/Edward F. Shea
EDWARD F. SHEA
United States District Judge

ORDER ~ 5